SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 862.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

DAN HILL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA.

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1 TRANSCRIPT OF THE RECORD.

In the District Court of the United States for the Southern District of West Virginia, at Charleston.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
DAN HILL, DEFENDANT IN ERROR.
} Upon an indictment for vio. act March 3, 1917.

Lon H. Kelly, Esquire, United States attorney, for the United States of America, plaintiff in error; E. E. Robertson, Esquire, for Dan Hill, defendant in error.

Be it remembered that heretofore, to wit: At a District Court of the United States for the Southern District of West Virginia, continued and held at Charleston, in said district, on Thursday, the 22nd day of November, A. D. 1917, the following order was made and entered of record:

Order.

THE UNITED STATES
vs.
DAN HILL.
} No. 1874. Upon an ind. for vio. act March 3, 1917.

The grand jury appeared in court pursuant to retirement and presented an indictment against the said defendant, endorsed "A true bill," which indictment is ordered to be filed.

2 The indictment referred to in the foregoing order is in the words and figures as follows:

Indictment.

In the District Court of the United States for the Southern District of West Virginia.

At the November term, in the year of our Lord one thousand nine hundred and seventeen.

UNITED STATES OF AMERICA,
Southern District of West Virginia, ss:

The grand jurors of the United States of America, duly selected, summoned, impaneled and sworn, in and for the district aforesaid, upon their oath, present:

That heretofore, to wit, on the 20th day of November, A. D. 1917, one Dan Hill, then and there being in the State of Kentucky, to wit, at Catlettsburg, in said last-named State, and then and there intending to go and to be carried by means of a common carrier engaged in interstate commerce, from the said State of Kentucky, to and into the said State of West Virginia and to a point in said State of West Virginia, within the said Southern District thereof, and within the jurisdiction of this court, and then and there also intending to carry upon his person, as a beverage, for his own personal use, a quantity

of intoxicating liquor, to wit, one quart of intoxicating liquor, into said State of West Virginia, and to a point within the said Southern District thereof, he, the said Dan Hill, did, on the day first aforesaid, at a point in the State of Kentucky, to wit, at Catlettsburg, in said last-named State, order, purchase, and procure a quantity of intoxicating liquor, to wit, one quart of intoxicating liquor, contained in bottles, and did then and there board a certain trolley car,
3 sometimes called a street car, then and there being operated by a common carrier corporation engaged in interstate commerce, to wit, the Ohio Valley Electric Railway Company, and by means thereof did cause himself and the said intoxicating liquor, then on his person, as aforesaid, to be carried and transported in interstate commerce into the State of West Virginia, and to a point within the said Southern District thereof, and to a point within the jurisdiction of this court, to wit, the city of Kenova, in said district, and in said last-named State.

And so the grand jurors aforesaid, upon their oath aforesaid, do present: That said Dan Hill, on the 20th day of November, A. D. 1917, in the said Southern District of West Virginia and within the jurisdiction of this court, did, unlawfully, willfully, knowingly, and in violation of an act of Congress approved March 3, 1917, commonly called and known as the "Reed amendment," order, purchase, and cause to be transported in interstate commerce, by means of a certain common carrier engaged in interstate commerce, to wit, the Ohio Valley Electric Railway Company, from a point in the State of Kentucky, to wit, from Catlettsburg, in said last-named State, to and into the State of West Virginia, and to a point therein within the said Southern District thereof, and to a point within the jurisdiction of this court, to wit, to the city of Kenova, in said State of West Virginia, and in said Southern District thereof, a quantity of intoxicating liquor, as a beverage, for his own personal use, to wit, one quart of intoxicating liquor, the manufacture and sale of intoxicating liquors for beverage purposes within the State of West Virginia being then prohibited by the laws of the said State of West Virginia,
and the said intoxicating liquor so ordered, purchased, and
4 caused to be transported in interstate commerce by the said Dan Hill, as aforesaid, then and there not being ordered, purchased, or caused to be transported for scientific, sacramental, medicinal, or mechanical purposes, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

L. H. KELLY,
United States Attorney.

Upon the evidence of A. E. Hayes, O. E. Pollard. Witnesses sworn in open court to give evidence before grand jury.

(Endorsed:) No. 1874. U. S. District Court. The United States of America vs. Dan Hill.

Indictment.

U. S. Rev. St., Act 3/3/17.

L. H. KELLY, *U. S. Attorney.*

A true bill.

GEO. F. COYLE, *Foreman.*

Filed November 22, 1917.

EDWIN M. KEATLEY, *Clerk.*

5 And at another day, to wit: At a District Court of the United States for the Southern District of West Virginia, continued and held at Charleston, in said district, on Friday, the 23" day of November, A. D. 1917, the following order was made and entered of record:

Order.

THE UNITED STATES *vs.* DAN HILL.	No. 1874. Upon an Ind. for vio. act March 3, 1917.

This day came as well the district attorney as the defendant Dan Hill in his proper person, and thereupon the said defendant, by his attorney E. E. Robertson, demurred to the said indictment and moved to quash the same, in which demurrer the district attorney joins, and after argument of counsel were submitted to the court, and the court not now being advised of its judgment in the matter takes time to consider, and this cause is continued until the first day of the next term of this court. Thereupon the said Dan Hill here in open court entered into a recognizance in the sum of two hundred dollars, conditioned for his appearance here before the judge of this court on the said first day of the next term, to answer of and concerning such further judgment as the court may in this behalf determine.

And at another day, to wit: At a District Court of the United States for the Southern District of West Virginia, continued and held at Charleston, in said District, on Tuesday, the 15" day of January, A. D. 1918, the following judgment was made and entered of record:

6 *Judgment.*

THE UNITED STATES *vs.* DAN HILL.	No. 1874. Upon an Ind. for vio. act March 3, 1917.

This day came again as well the district attorney as the defendant Dan Hill in his proper person, and by his attorney; and the matters of law arising upon the demurrer and motion to quash the indictment heretofore entered herein on the 23" day of November, 1917, having been maturely considered by the court, the court is of opinion that the law is for the defendant, and doth, for reasons stated in the written opinion of the court, and ordered filed herein, sustain said

demurrer and motion; to which action and finding of the court, the United States by its district attorney, objects and excepts.

And the court here now proceeding to render judgment upon the finding aforesaid, it is considered by the court, that the defendant Dan Hill be discharged from said indictment and go hence without day.

The opinion of the court referred to in the foregoing judgment is in the words and figures as follows:

Opinion.

UNITED STATES OF AMERICA
vs.
DAN HILL.
} Violation of act March 3, 1917. #1874.

Upon demurrer and motion to quash indictment.

E. E. Robertson, Esq., for defendant.

L. H. Kelly, U. S. Atty., and F. W. McCullough, Ass't U. S. Atty. for Government.

KELLER, District Judge: The indictment in this case is
7 challenged by demurrer and motion to quash as insufficient in that it does not state an offense against the laws of the United States. This indictment sets forth in appropriate and technical language that on the 20th day of November, 1917, the defendant, Dan Hill, being at the time in Catlettsburg, Ky., purchased one quart of intoxicating liquor intending to carry the same for his personal use to a point in the State of West Virginia, and that he did carry the same on his person, and on a trolley car of a common carrier engaged in interstate commerce, to wit: on a car of the Ohio Valley Electric Railway Company, from Catlettsburg, Ky., to Kenova, W. Va., in this district, and concludes that by so doing the defendant violated what is commonly known as the "Reed amendment," approved March 3, 1917.

The Wilson Act, approved August 8, 1890, provided "That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale, or storage therein, shall, upon arrival in such State or Territory, be subject to the operation and effect of the laws of such State or Territory, enacted in the exercise of its police power to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

This act constituted a very important change in the policies of the United States in respect to liquor transported from one State to another. Prior to its passage it was incompetent for the several States to legislate in respect to liquor transported to a dry State so long as it remained in the original package, but by the provisions of

this act privilege was removed from the subject matter. Upon a sale in the original package in Kansas (which had enacted pro-
8 hibitory laws), the constitutionality of this act was upheld and determined. In re Rahrer, 140 U. S., 545 (1891).

The Wilson Act is still in force, but later decisions of the Supreme Court of the United States determined that the operation of State laws upon liquor transported in interstate commerce could not take effect until after delivery to the consignee, and that the phrase "upon arrival therein" did not mean arrival at the State line, but at the point of destination and delivery to the consignee.

Rhodes v. Iowa, 170 U. S., 412–421 (1898).

Vance v. Vendercook Co. (No. 1), 170 U. S., 438–452 (1898).

American Express Co. v. Iowa, 196 U. S., 133–143 (1905).

Adams Express Co. v. Kentucky, 206 U. S., 129 (1907).

Subsequent legislation of Congress, as embraced in sections 238, 239, and 240 of the United States Penal Code (act Mar. 3, 1909), have forbidden, under penalties, practices permitted under some of the decisions of the Supreme Court upon the effect of the Wilson Act. Thus interstate shipments of intoxicating liquors to be paid for on delivery are now forbidden; packages of intoxicating liquors must be properly labelled as such; and it is made an offence to knowingly deliver such shipments to a person other than the bona fide consignee.

This legislation, as well as that to be hereinafter referred to, indicates a policy on the part of the United States to cooperate with and aid the several States in making their prohibitory laws effective and at the same time not to interfere unduly with the freedom of contract in States which have not prohibited the traffic in liquor.

The next act passed by Congress, known as the Webb-Kenyon Act, approved February 28, 1913, bears on its face its purpose to prohibit the interstate transportation of liquor to be in any manner used in violation of the laws of the State into which transported.
9 That act provides "That the shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spirituous, vinuous, malted, fermented, or other intoxicating liquor is intended by any person interested therein to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited."

It is noticeable, and I call attention to the fact that the provisions of both the Wilson Act and the Webb-Kenyon Act are not limited to

liquor transported into a State or Territory in "commerce," but apply as well to liquors transported by the owner thereof for his own use, and it is my contention that in construing the so-called Reed amendment, approved March 3, 1917, the distinction between "interstate transportation" and "transportation in interstate commerce" must be carefully borne in mind. That act, in so far as it has reference to this indictment, reads as follows:

"Whoever shall order, purchase, or cause intoxicating liquors to be transported in interstate commerce, except for scientific, sacramental, medicinal, and mechanical purposes, into any State or Territory, the laws of which State or Territory prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes, shall
10 be punished as aforesaid, provided that nothing herein shall authorize the shipment of liquor into any State contrary to the laws of such State; * * *."

To my mind it is perfectly clear that the purpose of this act, like that of the Wilson and Webb-Kenyon Acts, was to aid in the enforcement of State laws upon the subject, and its whole scope was limited to intoxicating liquors which were to be the subject of "commerce" in the State into which transported, or to cases in which the transaction by which they were introduced into the State was itself a transaction in interstate commerce.

The other two acts go further and subject liquors introduced into a State from outside its limits to the laws of that State in respect to possession and use as well as to the right to make sale thereof.

"Commerce" and "transportation" are not synonymous terms, at least not necessarily so, and not so in the present instance, as shown by the allegations set out in the indictment. I grant that if a person personally bought even as little as one quart of liquor in a foreign State, intending to resell the same in the State of his domicile, his personal carrying of it to his home would be but a step in the commercial transaction intended, and the transportation in such case would be in "interstate commerce." But such intention is negatived in the indictment itself, and it is evident that no act of the defendant was in violation of the statute of West Virginia, and hence prohibited by the Webb-Kenyon Act or the first proviso in the Reed amendment.

The West Virginia statute, so far as pertinent to this inquiry (acts W. Va., 1917, c. 58, sec. 31), reads as follows:

"SEC. 31. It shall be unlawful for any person to bring or carry into the State, during any period of thirty consecutive days,
11 or carry from one place to another within the State, in any manner, whether in his personal baggage, or otherwise, more than one quart of intoxicating liquors for personal use. If any person shall bring, or carry into the State, during any period of thirty consecutive days, or from one place to another within the State, in any manner, whether in his personal baggage, or otherwise, more than one quart of intoxicating liquors for personal use, he shall

be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred nor more than five hundred dollars, and imprisoned in the county jail not less than two nor more than six months. And upon conviction of the same person for the second offence under this act he shall be guilty of a felony and be confined in the penitentiary not less than one nor more than five years; and it shall be the duty of the prosecuting attorney in all cases to ascertain whether or not the charges made by the grand jury is the first or second offense; and if it be a second offense it shall be so stated in the indictment returned, and the prosecuting attorney shall introduce the record evidence before the trial court of said second offense, and shall not be permitted to use his discretion in charging said second offense, or in introducing evidence and proving the same on the trial.

"It shall be unlawful for any carrier operating in this State to knowingly carry for a passenger, or knowingly permit a passenger to carry into the State, or from one place to another within the State, more than one quart of intoxicating liquors as personal baggage. But nothing contained in this section shall be construed as requiring a carrier to carry or permit a passenger to carry into the State, or from one place to another in the State, any intoxicating liquors as personal baggage. If any carrier shall knowingly carry for a passenger,
3 or knowingly permit a passenger to carry into the State, or from one place to another within the State, more than one quart of intoxicating liquors as personal baggage, the carrier shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred nor more than one thousand dollars. And a court of equity upon showing that a carrier has knowingly carried for a passenger, or knowingly permitted a passenger to carry into the State, or from one place to another within the State, more than one quart of intoxicating liquors as personal baggage, or through the want of due caution and care has carried for a passenger or permitted a passenger to carry into the State, or from one place to another within the State, more than one quart of intoxicating liquor as personal baggage, shall have jurisdiction to entertain such suit and to enter such decree and take such proceedings as are provided for in section seventeen."

This act in terms allows any person to bring into the State not more than one quart of liquor in any period of thirty days for his personal use only, and prohibits him from exceeding this quantity. Other provisions of the State laws prohibit the introduction of liquor into the State except for the personal use of the owner, so that there is no provision whatever in the State laws for the local commerce in intoxicating liquors.

Under this state of the laws the concrete question is: Do the acts alleged in the indictment amount to causing "intoxicating liquors to be transported in interstate commerce" into the State of West Virginia in violation of the Reed amendment?

If that act is to be construed in harmony with the unrepealed Wilson and Webb-Kenyon Acts, the acts averred do not constitute
13 such an offense; and I think it must be so construed because its apparent object, as shown in the two provisos included in its terms, is in aid of State laws regulating the subject and not in derogation thereof.

Further, if the proper interpretation of the act is as contended for by the representative of the Government, why use the term "interstate commerce," which in its ordinary significance connotes that an article so transported is for purposes of trade.

To my mind the commercial history of the liquor referred to in the indictment ceased with its purchase and delivery to the defendant in Catlettsburg, Kentucky, and in respect to the following interstate journey by trolley car from Catlettsburg, Ky., to Kenova, W. Va., it was utterly indifferent whether the defendant carried the liquor on his person or in his person.

If it was intended to make the sanctions of this act apply to the mere interstate transportation of the liquor, surely the Congress would have used language appropriate to convey the idea intended, as the Congress did in both the Wilson Act and the Webb-Kenyon Act heretofore quoted.

It seems needless to say more. I feel that this act, if possible so to do, must be construed in harmony with the unrepealed laws of the United States (i. e., the Wilson and Webb-Kenyon Acts) and the West Virginia Statute, and I think this can and should be done.

It follows that the motion to quash the indictment herein must be sustained.

And at another day, to wit: At a District Court of the United States for the Southern District of West Virginia continued and held
14 at Charleston, in said district, on Thursday, the 24th day of January, A. D. 1918, the following order was made and entered of record:

Order.

UNITED STATES vs. DAN HILL.	No. 1874.	United States District Court, Southern District of West Virginia.

On motion of the United States herein appearing by Lon H. Kelly, United States attorney, and on suggesting error to the prejudice of the United States in the judgment rendered in this case on the 15th day of January, 1918, sustaining the demurrer filed in this case by the defendant, and on further suggesting the assignment of errors herein filed,

It is ordered that a writ of error be granted the United States, returnable within thirty days from this date to the Supreme Court of the United States, at Washington, D. C., and that the said writ of error act as a supersedeas, and the United States be dispensed from giving bond on said writ of error.

Petition for writ of error.

Filed January 24, 1918.

UNITED STATES OF AMERICA
vs.
DAN HILL. } No. 1874

Now comes the United States of America, by its attorney, Lon H. Kelly, and complains that in the record and proceedings had in this cause, and in the order and judgment sustaining the demurrer to the indictment herein, and sustaining defendant's motion to quash the indictment herein and dismissing said indictment, which judgment was duly made and filed in the office of the clerk of the United States District Court for the Southern District of West Virginia on
15 January 15, 1918, a manifest error has happened, as will appear in the assignment of errors herewith submitted.

Wherefore the United States of America prays for the allowance of a writ of error and for such other orders and process as may cause the same to be corrected by the Supreme Court of the United States.

L. H. KELLY,
United States Attorney.

Assignment of errors.

Filed January 24, 1918.

UNITED STATES OF AMERICA,
vs.
DAN HILL. } No. 1874.

The United States of America, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers occurred in the decision of the court herein, sustaining defendants' demurrer and motion to quash the indictment.

I. The court erred in sustaining the demurrer to the indictment.

II. The court erred in sustaining the motion to quash the indictment.

III. The court erred in entering judgment on the demurrer and discharging the defendant.

Wherefore the United States of America prays that the judgment of the District Court of the United States for the Southern District of West Virginia be, under the act of Congress approved March 2, 1907, reviewed, by the Supreme Court of the United States, and said judgment be reversed.
16

L. H. KELLY,
United States Attorney for the Southern District of West Virginia.

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judge of the United States District Court for the Southern District of West Virginia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said United States District Court for the Southern District of West Virginia, before you, or some of your, between the United States of America, plaintiff, and Dan Hill, defendant, a manifest error hath happened, to the great damage of the said the United States of America, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 24" day of January, in the year of our
17 Lord one thousand nine hundred and eighteen.

EDWIN M. KEATLEY,
Clerk of the United States
District Court for the Southern
District of West Virginia.

Allowed by Hon. Benj. F. Keller, judge of the United States District Court for the Southern District of West Virginia.

Citation.

UNITED STATES OF AMERICA, *ss:*

To Dan Hill, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the United States District Court for the Southern District of West Virginia, wherein the United States of America is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Benj. F. Keller, judge of the United States District Court for the Southern District of West Virginia, this 24"

day of January, in the year of our Lord one thousand nine hundred and eighteen.

[SEAL.]

BENJ. F. KELLER,
Judge of the United States District Court
for the Southern District of West Virginia.

18 *Acceptance of service.*

Service of the within citation is hereby accepted this 30" day of January, 1918, for and on behalf of the defendant, Dan Hill, to have the same effect and none other as if served by the United States marshal for the southern district of West Virginia.

E. E. ROBERTSON,
Attorney for Dan Hill.

Clerk's certificate.

UNITED STATES OF AMERICA,
Southern District of West Virginia, ss:

I, Edwin M. Keatley, clerk of the District Court of the United States for the Southern District of West Virginia, do certify that the foregoing is a true and complete transcript of the record and proceedings in the case of the United States of America vs. Dan Hill, upon an indictment for violation of act March 3, 1917, and now of record and on file in my office.

In testimony whereof I hereto set my hand and the seal of said court at Charleston in said district this 31" day of January, A. D. 1918, and in the 142" year of the independence of the United States of America.

[SEAL.]

EDWIN M. KEATLEY,
Clerk, D. C. U. S. S. D. W. Va.

19 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the Judge of the United States District Court for the Southern District of West Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said United States District Court for the Southern District of West Virginia, before you, or some of you, between The United States of America, Plaintiff, and Dan Hill, Defendant, a manifest error hath happened, to the great damage of the said The United States of America, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Wash-

ington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 24" day of January, in the year of our Lord one thousand nine hundred and eighteen.

[SEAL.] EDWIN M. KEATLEY,
Clerk of the United States District Court
for the Southern District of West Virginia.

Allowed by—
Hon. BENJ. F. KELLER,
Judge of the United States District Court
for the Southern District of West Virginia.

20 UNITED STATES OF AMERICA, *ss:*

To Dan Hill, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the United States District Court for the Southern District of West Virginia, wherein The United States of America is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Benj. F. Keller, Judge of the United States District Court for the Southern District of West Virginia, this 24" day of January, in the year of our Lord one thousand nine hundred and eighteen.

[SEAL.] BENJ. F. KELLER,
Judge of the United States District Court
for the Southern District of West Virginia.

21 *Acceptance of service.*

Service of the within citation is hereby accepted this 30" day of January, 1918, for and on behalf of the defendant, Dan Hill, to have the same effect and none other as if served by the United States marshal for the Southern District of West Virginia.

E. C. ROBERTSON,
Attorney for Dan Hill.

(Indorsement on cover:) File No. 26,329. S. West Virginia D. C. U. S. Term No. 862. The United States of America, plaintiff in error, vs. Dan Hill. Filed February 12th, 1918. File No. 26,329.

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

THE UNITED STATES OF AMERICA, Plaintiff in Error,
v.
DAN HILL. } No. 862.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General and in accordance with the provisions of the Criminal Appeals Act, 34 Stat. 1246, moves to advance the above-entitled cause for hearing on a day convenient to the court.

Defendant was indicted in the District Court of the United States for the Southern District of West Virginia for having transported in interstate commerce 1 quart of intoxicating liquor from Catlettsburg, Ky., to Kenova, W. Va., in violation of the so-called "Reed bone-dry amendment" (act of Mar. 3, 1917, 39 Stat. 1058, 1069), which provides:

> * * * Whoever shall order, purchase, or cause intoxicating liquors to be *transported in interstate commerce*, except for scientific, sacramental, medicinal, and me-

chanical purposes, into any State or Territory the laws of which State or Territory prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes shall be punished. * * *

The liquor alleged to have been transported by defendant was carried by him on his person and was for his personal use. The laws of West Virginia permit a person to bring into the State for his personal use 1 quart of liquor in each 30 days.

A demurrer to the indictment was sustained, the District Court holding in substance and effect that the carrying by a person of the quantity of liquor here involved in interstate transportation into a State the laws of which permit him to bring into the State 1 quart of liquor in every 30 days is not transportation in interstate commerce within the meaning of the Reed amendment.

Notice of this motion has been served on opposing counsel.

JOHN W. DAVIS,
Solicitor General.

APRIL, 1918.

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In the Supreme Court of the United States.

OCTOBER TERM, 1918.

THE UNITED STATES OF AMERICA, PLAINTIFF in Error,
v.
DAN HILL. } No. 357.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is a writ of error to review the action of the district court in quashing an indictment charging a violation of what is known as the Reed amendment, being a part of section 5 of the Post Office appropriation act, approved March 3, 1917, 39 Stat., 1058, 1069, as follows:

> * * * Whoever shall order, purchase, or cause intoxicating liquors to be transported in interstate commerce, except for scientific, sacramental, medicinal, and mechanical purposes, into any State or Territory the laws of which State or Territory prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes shall be punished as aforesaid: *Provided*, That nothing herein shall authorize the shipment of liquor into any State contrary to the laws of such State: * * *

THE INDICTMENT.

The facts charged are that the defendant in error, being in Kentucky, purchased a quart of intoxicating liquor, for his personal use as a beverage, intending to carry it into West Virginia, a State whose laws forbid the manufacture and sale of intoxicating liquors for beverage purposes, and did carry it on his person, while riding on a trolley car operated by a common carrier engaged in interstate commerce, into the State of West Virginia.

DECISION BELOW.

The district judge, drawing a distinction between *interstate transportation* and interstate commerce, held that: While the liquor in question was transported into a dry State from another State, it was not transported *"in interstate commerce"* because intended for defendant's personal use and not for purposes of trade.

BRIEF.

I.

Congress has the power to forbid altogether, or to any extent it deems wise, the interstate movement of intoxicating liquors. *Clark Distilling Co.* v. *Western Maryland Ry. Co.*, 242 U. S. 311, 325–6.

II.

The Reed amendment is an absolute prohibition against the movement, in interstate commerce, of intoxicating liquors, except for scientific, sacramental, medicinal, or mechanical purposes, from one

State to another whose laws forbid the manufacture or sale of intoxicating liquors. 39 Stat. 1058, 1069.

III.

The Webb-Kenyon Act forbids interstate transportation of liquor to be received or used in violation of State laws. The Reed amendment does not affect the transportation of liquor for scientific, sacramental, medicinal, or mechanical purposes. Such transportation is, therefore, lawful or unlawful according as it complies or does not comply with the State law. But the Reed amendment covers the whole field of the transportation into dry States of liquor for beverage purposes and, establishing its own rule, supersedes the law of West Virginia permitting the personal bringing in for one's own use. 37 Stat. 699; 39 Stat. 1069; *Clark Distilling Co.* v. *Western Maryland Ry. Co., supra;* Acts West Va., 1917, ch. 58, sec. 31; *Seaboard Air Line Ry. Co.* v. *Horton,* 233 U. S. 492; *Missouri, etc., Ry. Co.* v. *Wulf,* 226 U. S. 570; *Michigan Central R. R. Co.* v. *Vreeland,* 227 U. S. 59; *St. Louis, etc., Ry. Co.* v. *Hesterly,* 228 U. S. 702; *St. Louis, etc., Ry. Co.* v. *Seale,* 229 U. S. 156; *Minnesota Rate Cases,* 230 U. S. 352; *Taylor* v. *Taylor,* 232 U. S. 363; *Chicago, etc., Ry. Co.* v. *Devine,* 239 U. S. 52.

IV.

The transportation of passengers or property from State to State, by whatever means or by whomever accomplished, is itself, and without more, inter-

state commerce. *Gibbons* v. *Ogden*, 9 Wheat. 1, 188; *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S. 196, 203; *Brown* v. *Maryland*, 12 Wheat. 419, 446; *Second Employers' Liability Cases*, 223 U. S. 1, 46; *International Textbook Co.* v. *Pigg*, 217 U. S. 91, 107; *Butler Bros. Shoe Co.* v. *United States Rubber Co.*, 156 Fed. Rep. 1, 17; *Lottery Case*, 188 U. S. 321, 345; *Railroad* v. *Husen*, 95 U. S. 465, 469–70; *Kirmeyer* v. *Kansas*, 236 U. S. 568, 572; *Kelley* v. *Rhoads*, 188 U. S. 1; *Pipe Line Cases*, 234 U. S. 548; *Rearick* v. *Pennsylvania*, 203 U. S. 507, 512; *Coe* v. *Errol*, 116 U. S. 517.

V.

The expression in the Reed amendment, "in interstate commerce," is merely the short equivalent of "from one State to another State," and the prohibition is, therefore, against all movement of intoxicating liquors for beverage purposes from one State into a dry State. *Hoke* v. *United States*, 227 U. S. 308, 323; *Hipolite Egg Co.* v. *United States*, 220 U. S. 45, 57.

VI.

In this case, the liquor was carried on the person of one who was being carried by an interstate common carrier, and hence it, as well as the person, were in interstate commerce. *United States* v. *Chavez*, 228 U. S. 308, 323.

ARGUMENT.

It can not now be doubted that Congress has the *power* to forbid altogether the movement of intoxicating liquors between the States. As said by this court in holding valid the Webb-Kenyon Act, *Clark Distilling Company* v. *Western Maryland Railway Company*, 242 U. S. 311, 325–6:

> It is not in the slightest degree disputed that if Congress had prohibited the shipment of all intoxicants in the channels of interstate commerce and therefore had prevented all movement between the several States, such action would have been lawful because within the power to regulate which the Constitution conferred.

Indeed, the judgment below is not rested on any supposed want of power in Congress to regulate any and all kinds of interstate transportation. Thus the learned judge himself called attention to the fact that the Wilson and Webb-Kenyon Acts applied even "to liquors transported by the owner thereof for his own use," and, contrasting those acts with the Reed amendment, held that the use of the words, "in interstate commerce," was intended to limit the application of the latter to transportation which is, in some way, a part of a commercial or trading transaction. He thought it could apply only to cases in which the transaction by which liquors are introduced into the State is "itself a transaction in interstate commerce," or to liquors which are to be the "subject of commerce" in the State into which they are transported.

Presumably he meant to include in the former class those cases in which a seller in one State delivers goods to a carrier to be delivered to the purchaser in another State. In the latter class he included all those cases in which the purchaser or owner himself transports goods by any means whatever from one State to another, for he said:

> * * * I grant that if a person personally bought even as little as one quart of liquor in a foreign State, intending to resell the same in the State of his domicile, his personal carrying of it to his home would be but a step in the commercial transaction intended, and the transportation in such case would be in "interstate commerce." (Rec., p. 6.)

MEANING OF REED AMENDMENT.

The question then is merely one of construction. Does the use of the expression "interstate commerce" exclude from the operation of the law the personal transportation of liquor by the owner from one State to another unless he intends to sell it or trade it in the latter State? We shall discuss this question first without reference to the fact that, while performing this act of transportation, the defendant was himself a passenger on an interstate carrier.

The language is quite simple and the terms of the enactment quite definite. The scope of the act is limited to *transportation* in interstate commerce, and includes bargain and sale only so far as they may be used to cause transportation. The prohibition is against purchasing to be *transported*, ordering *to be*

transported, or, in any other way, causing *to be transported*. True, transportation for all purposes is not forbidden, and the use to which liquors being transported are to be put is a determinative factor in ascertaining whether the law applies. But the act itself plainly names the excepted purposes. They are scientific, sacramental, medicinal, and mechanical. Unless the transportation is for one of these excepted purposes, which do not include personal use as a beverage, the prohibition is absolute. The act is equally explicit in describing the territory into which transportation is forbidden—a State whose laws forbid, not the transportation, but the *manufacture and sale* of intoxicating liquors.

The prohibition, therefore, clearly applies to this case unless, as the learned district judge thought, a limiting intent is to be implied from the words "in interstate commerce."

RELATION OF ACT TO OTHER LEGISLATION.

This is one of a series of laws dealing with intoxicating liquors which Congress, exerting its power to regulate interstate commerce, has passed since it was held that liquor shipped into a State could be sold, notwithstanding the laws of that State, so long as it remained in the original package and in the hands of the consignee. The first was the Wilson Act, 26 Stat., ch. 728, p. 313, which made liquors subject to State laws as soon as delivered to the consignee. The next was the Webb-Kenyon Act, 37 Stat., 699, which made it unlawful to transport into a State liquor

which is to be "received, possessed, sold, or in any manner used" in violation of the laws of that State. It may be noted that neither of these acts makes any distinction between liquor transported for personal use and that transported for any other purpose. The Wilson Act applies to that transported for "use, consumption, sale, or storage," and the Webb-Kenyon Act to that to be "in any manner used."

Congress, of course, has plenary power over interstate commerce in liquors. By passing the Webb-Kenyon law it did not and could not surrender this power, in any measure, to the States. True, the practical effect of the law was to give effect to State laws prohibiting interstate shipments of liquor, but this was true because Congress, while not, for the time, exerting to its full extent the power to prohibit all such shipments, did exert that power to the extent of itself establishing "a regulation making it impossible for one State to violate the prohibitions of the laws of another through the channels of interstate commerce." *Clark Distilling Co.* v. *Western Maryland Ry. Co.*, *supra*, 331. But this did not preclude Congress from thereafter exerting its power to a further extent, which is exactly what was done in the passage of the Reed amendment. It still did not exert its full power by excluding liquors entirely from interstate commerce. But it covered the entire field of transportation of liquors for beverage purposes into States where their sale and manufacture were unlawful, by forbidding such

transportation altogether. It extends the Webb-Kenyon law and, covering the whole field, it supersedes the State laws on the same subject. *Seaboard Air Line Ry. Co.* v. *Horton*, 233 U. S. 492; *Missouri, etc., Ry. Co.* v. *Wulf*, 226 U. S. 570; *Michigan Central R. R. Co.* v. *Vreeland*, 227 U. S. 59; *St. Louis, etc., Ry. Co.* v. *Hesterly*, 228 U. S. 702; *St. Louis, etc., Ry. Co.* v. *Seale*, 229 U. S. 156; *Minnesota Rate Cases*, 230 U. S. 352; *Taylor* v. *Taylor*, 232 U. S. 363; *Chicago, etc., Ry. Co.* v. *Devine*, 239 U. S. 52. But because the prohibition of the Reed amendment did not apply to shipments of liquor for certain excepted purposes a proviso was added:

> That nothing herein shall authorize the shipment of liquor into any State contrary to the laws of such State.

The result is that the transportation in interstate commerce of liquor for beverage purposes into a dry State is absolutely prohibited by the Reed amendment, regardless of whether there is a State law either prohibiting or permitting it. The transportation of liquor for scientific, sacramental, medicinal, and mechanical purposes is not affected by that Act, but is under the Webb-Kenyon law unlawful unless in accord with the State law, if any, regulating such shipments. When the Webb-Kenyon law was before this court, in a case coming from West Virginia, that State had enacted laws under which it was unlawful for a carrier or even an individual to carry liquor into the State for another. Consequently, the Webb-

Kenyon Act operated as a prohibition of such carriage. *Clark Distilling Co.* v. *Western Maryland Ry. Co.*, *supra*. At that time, however, the State had not attempted to prohibit or regulate the personal bringing in of liquor for one's own use. Hence, the Webb-Kenyon Act was no obstacle to such bringing in. But since then the State has enacted that it shall be unlawful for anyone to bring in for his personal use more than a quart once every 30 days. Acts West Virginia, 1917, ch. 58, sec. 31. Under the Webb-Kenyon law such bringing would not have been unlawful unless in greater quantities or more frequently than thus permitted. But this was because Congress had then not gone further than to so regulate interstate commerce that its channels should not be used to violate State laws. By the passage of the Reed amendment, however, Congress again regulated interstate commerce by itself prescribing to what extent its channels should be used to transport liquor into dry States. It follows that any law of West Virginia in conflict with this regulation, though formerly enforcible, is now superseded.

In other words, the prohibition of the Reed amendment against the transportation of liquor into dry States is the law of the land, unembarrassed by laws previously enacted by either Congress or by the States.

Interstate transportation is itself interstate commerce and hence "to transport in interstate commerce" means neither more nor less than "to transport from one State to another."

The ruling below rests on the fallacy that there is such a thing as interstate transportation distinct from interstate commerce. But interstate transportation is the one thing without which there can not be a transaction in interstate commerce. Of course, interstate commerce may embrace many things besides transportation. It is intercourse between the States, *Gibbons* v. *Ogden*, 9 Wheat. 1, 188, or, as said in *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S. 196, 203:

> Commerce among the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, and the navigation of public waters for that purpose, as well as the purchase, sale, and exchange of commodities.

Of course, when we are considering the extent of the power to regulate commerce, it is accurate to say that traffic or trade is as essential to the complete carrying on of interstate commerce as is transportation. *Brown* v. *Maryland*, 12 Wheat. 419, 446. But where the question is whether a particular transaction is interstate commerce, it is not necessary that every element which enters, or can enter, into such commerce shall be present. Trade and traffic are commerce. But no amount of trade and traffic, even between citizens of different States, is interstate commerce unless there is interstate transportation.

The rule that goods in the original package may be sold without interference from a State into which they have been shipped is due to the fact that their interstate transportation has placed them in interstate commerce and that the right to carry on commerce includes the usual incident of selling. The transportation of property is often and the transportation of persons always entirely distinct from buying and selling, and yet this is the best recognized form of interstate commerce. Interstate transportation is the one vital element which must enter into every act of interstate commerce for the reason that it is itself interstate commerce, and no other form of commerce can become such except by being connected with it. It is a distinct branch of interstate commerce as well as an essential element in every other branch. Thus, it was said in *Second Employers' Liability Cases*, 223 U. S. 1, 46:

> It embraces commercial intercourse in all its branches, including transportation of passengers and property by common carriers, whether carried on by water or by land.

And in *International Textbook Co.* v. *Pigg*, 217 U. S. 91, 107, quoting with approval from *Butler Bros. Shoe Co.* v. *United States Rubber Co.*, 156 Fed. Rep. 1, 17, it was said that—

> all interstate commerce is not sales of goods. Importation into one State from another is the indispensable element, the test, of interstate commerce.

And in the *Lottery Case*, 188 U. S. 321, 345:

> Undoubtedly, the carrying from one State to another by independent carriers of things or commodities that are ordinary subjects of traffic, and which have in themselves a recognized value in money, constitutes interstate commerce.

And in *Railroad Co.* v. *Husen*, 95 U. S. 465, 469–470, it was said:

> That the transportation of property from one State to another is a branch of interstate commerce is undeniable, and no attempt has been made in this case to deny it. * * * Transportation is essential to commerce, or rather it is commerce itself.

Nor is it at all important that the transportation be by a carrier. In a rather recent case, involving the transportation of beer from State to State in wagons for which no hire was charged, it was said:

> Beer is a recognized article of commerce. The right to send it from one State to another and the act of doing so are interstate commerce the regulation whereof has been committed to Congress. *Kirmeyer* v. *Kansas*, 236 U. S. 568, 572.

And it has been held that sheep while being driven through a State by the owner or his employees as a part of the journey to market in another State are in interstate commerce. *Kelley* v. *Rhoads*, 188 U. S. 1.

Nor is it important that one is transporting his own goods. *Pipe Line Cases*, 234 U. S. 548, 560; *Rearick* v. *Pennsylvania*, 203 U. S. 507, 512.

The case of *Coe* v. *Errol*, 116 U. S. 517, is strikingly in point. The question was whether logs cut by the owner and, by him, floated down a river to a point in New Hampshire, where they were held by him with the intention of later floating them farther down the river into Maine to be there manufactured and sold, were in interstate commerce and so exempt from taxation in New Hampshire. These logs were all intended to be floated by the owner to Lewiston, Me. It was to be personal transportation by the owner and no transportation by carrier was intended. The logs fell into two classes. Those in the first class had been cut in New Hampshire and, without being out of that State, floated to Errol, from which point the owner intended later to transport them to Lewiston. Those in the second class had been cut in Maine, but, in order to float to Lewiston in that State, they would have to pass through New Hampshire. They had started from Maine on their journey through New Hampshire and reached Errol, where they were delayed by low water or other causes. This court announced the rule (p. 525) that goods are in interstate commerce "when actually started in the course of transportation to another State, or delivered to a carrier for such transportation." Applying this rule, the holding of the New Hampshire court that the logs were exempt was approved thus:

> This question does not present the predicament of goods in course of transportation through a State, though detained for a time within the State by low water or other causes

> of delay, as was the case of the logs cut in the State of Maine, the tax on which was abated by the Supreme Court of New Hampshire. Such goods are already in the course of commercial transportation, and are clearly under the protection of the Constitution. (P. 525.)

But the court held otherwise as to the logs cut in New Hampshire, saying:

> When the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving as an entrepôt for that particular region, whether on a river or a line of railroad, such products are not yet exports, nor are they in process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the State to the State of their destination, or have started on their ultimate passage to that State. (P. 525.)

In other words, goods are in interstate commerce in all cases the moment they actually start on a journey to another State, and, when transported by common carrier, that moment arrives when they are delivered to the carrier.

Indeed, so thoroughly understood is it that all interstate transportation is interstate commerce that the expression "transport in interstate commerce" has come to be merely the short equivalent of "transport from one State to another State," and the two expressions are used interchangeably by both the courts and Congress.

The White Slave Act penalized—

> any person who shall knowingly transport or cause to be transported, * * * in interstate or foreign commerce, * * * any woman, etc.

And this court said, in *Hoke* v. *United States*, 227 U. S. 308, 323:

> The principle established by the cases is the simple one, when rid of confusing and distracting considerations, that Congress has power over transportation "among the several States."

The language in the Food and Drugs Act is "any person who shall ship or deliver for shipment from any State * * * to any other State," and it was said:

> In other words, transportation in interstate commerce is forbidden to them. *Hipolite Egg Co.* v. *United States*, 220 U. S. 45, 57.

The power of Congress to regulate the transportation of passengers from State to State can not be doubted, whether such passengers be traveling for commercial purposes or for pleasure. And yet this could not be if the act of transportation itself was not, without more, interstate commerce. This court has sustained acts too numerous and too familiar to mention which regulated interstate transportation without any other words limiting their application to interstate commerce. And these acts could be sustained only as regulations of interstate commerce. Hence, if interstate transportation is not

interstate commerce unless connected with something else, they were beyond the power of Congress to enact.

It is submitted that the prohibition of the Reed amendment is not made less sweeping by the use of the words "transported in interstate commerce" than it would have been had the words transported from one State to another State been used, and that an unmistakable purpose is thus manifested to prohibit the transportation from one State to another of intoxicating liquor although carried on the person of the owner and intended for his personal use as a beverage.

TRANSPORTATION BY COMMON CARRIER CHARGED.

Moreover, if it could be said that transportation by a common carrier is necessary to make the transaction interstate commerce, the indictment in this case still charges an offense. While carrying the liquor on his person he was making an interstate trip as a passenger on the car of a common carrier. Unquestionably he himself was being transported in interstate commerce. The fare which he paid entitled him to transportation not only for himself but, in addition, for such reasonable amount of personal chattels as he might desire to carry with him. Since he was in interstate commerce, it would seem to follow, of necessity, that the liquor on his person was likewise transported in interstate commerce although not actually committed to the custody of the carriers. The fact that it was carried

on the person of defendant does not remove it from commerce, nor place it beyond the regulative power of Congress. *United States* v. *Chavez* 228 U. S. 525.

It is respectfully submitted that the judgment is erroneous and should be reversed.

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SEPTEMBER, 1918.

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